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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 CHARLES V. REED,

9 Plaintiff,

v.

10 WASHINGTON STATE
11 DEPARTMENT OF CORRECTIONS,
et al.,

12 Defendants.
13

CASE NO. C16-5993 BHS-DWC

ORDER DENYING
DEFENDANTS' OBJECTIONS

14 This matter comes before the Court on the order of the Honorable David W.
15 Christel, United States Magistrate Judge, Dkt. 120, and Defendants' objections to the
16 order, Dkt. 121.

17 On May 8, 2019, Judge Christel granted Plaintiff's Fed. R. Civ. P. 56(d) motion
18 for a continuance to pursue discovery and denied without prejudice Defendants' motion
19 for a protective order and motion for summary judgment. Dkt. 120. On May 22, 2019,
20 Defendants filed objections challenging the standard of review and the order. Dkt. 121.

21 First, Defendants argue that the Court should review the order *de novo* because it
22 is dispositive of their defense of qualified immunity. Dkt. 121 at 3–4. Although

1 Defendants argue that the order is “clearly erroneous and contrary to law,” which is the
2 standard under Rule 72(a), they contend that the Court should review the order *de novo*
3 under Rule 72(b) because it amounts to an implicit denial of the defense of qualified
4 immunity, which is dispositive. *Id.* Tellingly, Defendants provide no authority for the
5 proposition that denying a preliminary summary judgment motion without prejudice is a
6 dispositive ruling subject to Rule 72(b). Regardless, the Court finds no reason to resolve
7 this argument because Judge Christel did not err under either standard.

8 Second, Defendants take issue with Judge Christel denying their motion for
9 summary judgment without prejudice to allow for additional discovery. Defendants filed
10 a motion for summary judgment that requires the Court to determine whether issues of
11 fact exist. Fed. R. Civ. P. 56(a). Defendants submitted numerous facts in support of their
12 motion. If Plaintiff does not possess the facts necessary to counter Defendants’ facts, then
13 a continuance may be warranted. Fed. R. Civ. P. 56(d). Defendants fail to recognize this
14 well-established procedure and seem to implicitly assert that their facts are the only facts
15 that should matter. For example, Defendants argue that Defendant Weber should be
16 dismissed because “information suggesting Weber was involved in this invalid claim is
17 not likely to exist” and “because Weber has signed a sworn declaration stating “that he
18 was not involved in [Plaintiff’s] care, that he was not responsible for conducting a
19 review, and that he would not have been qualified to conduct any review because he is
20 not a medical provider.” Dkt. 121 at 10. Plaintiffs should have a fair opportunity to
21 determine whether such information does exist and to determine the veracity of the
22 information in that sworn affidavit. Moreover, there is nothing in the record to suggest

1 that Defendants could not file a motion to dismiss based on qualified immunity to test the
2 allegations in the complaint or file a motion for summary judgment based on uncontested
3 facts. Judge Christel simply concluded that Plaintiff should have an opportunity to gather
4 some facts before determining whether factual issues exist. There is no error in that
5 conclusion. Therefore, the Court denies Defendants' objections.

6 **IT IS SO ORDERED.**

7 Dated this 18th day of June, 2019.

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10 BENJAMIN H. SETTLE
United States District Judge
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